

THE HONORABLE THOMAS S. ZILLY

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

BUNGIE, INC., a Delaware corporation,

Plaintiff

v.

AIMJUNKIES.COM, a business of unknown
classification; PHOENIX DIGITAL GROUP
LLC, an Arizona limited liability company;
JEFFREY CONWAY, an individual; DAVID
SCHAEFER, an individual; JORDAN GREEN,
an individual; and JAMES MAY, an individual,

Defendants.

Cause No. 2:21-cv-0811 TSZ

**DECLARATION OF DAVID
SCHAEFER IN OPPOSITION
TO PLAINTIFF'S MOTION
FOR SANCTIONS AND TO
COMPEL DISCOVERY**

**Note on Motion Calendar:
April 14 2023**

I, David Schaefer, under penalty of perjury under the laws of the United States, state
and declare as follows:

1. I am an Officer and Director of Defendant Phoenix Digital Group LLC as well
as one of the individual Defendants in the above captioned matter and have
knowledge of the facts stated herein.
2. I have no animosity towards the Court or the legal system as a whole as
implied by Plaintiff Bungie, Inc. ("Bungie"). I FULLY respect the Court and
the court system. This is just another facet of Bungie smearing my reputation
and legal position for its own benefit. I cannot and will not respect a company
such as Bungie that brings this litigation forward as a result of a "Shakedown"
that went wrong for them.

- 1 3. What I mean by "Shakedown" is this: Bungie has gone after and successfully
2 accomplished the shutdown of several websites, such as ours, as a result of
3 their intense bullying of site owners by leveraging the power of a lawsuit to
4 intimidate and bully them into submission.
- 5 4. Bungie came to us and wanted \$150K and copies of our software and our
6 records to settle. We did not have \$150K to be extorted from us and we did not
7 make the software that is in question in their litigation. We have NEVER made
8 any software used for Destiny 2. In fact, we don't make software we simply are
9 and always have been a software reseller. My final statement on this is we did
10 not settle because we did not feel we had broken any laws with the product we
11 were selling so why would we give Bungie blood money we simply don't
12 have?
- 13 5. Neither Phoenix Digital not any of the Defendants has copied any work of
14 Bungie. This is nothing more than a David and Goliath story of a huge
15 company with a large contingent of lawyers trying to pressure the small guy
16 with one lawyer into submission for selling accessories to their game. They
17 want the whole market including aftermarket features for their game and they
18 are willing to Lie, Cheat and Intimidate to get where they want to go. Including
19 to this court.
- 20 6. Bungie would love to put forward a convincing argument that we destroyed
21 documents intentionally. This is the furthest from the truth. We clearly stated
22 in the deposition that the website automatically deletes transactions at the end
23 of the customers subscription period as a matter of security for our customers. I
24 don't know if you have ever had your personal banking information stolen
25 from a website and maliciously used without your approval. It happens all the
26 time. My ATM card was dumped from the Home Depot database and used
27 maliciously several times. At the time when Phoenix Digital owned the
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1 websites our database was compromised several times and some user's
2 information was compromised. We in turn as a security measure chose to auto
3 delete via program in the site to remove user information on our database to
4 protect our customers as best, we could. There is no grand conspiracy here, no
5 intentional spoliation. It simply is good business security done by all websites
6 now.

7 7. There is in place a redundancy for transaction records via our payment
8 processors. We, as requested in discovery, provided a list of all functioning
9 payment processors at the time in question. We also explained to Bungie that
10 the transactional records were available to Bungie through the payment
11 processors. We could not provide the transactional data because Mr. Conway
12 controlled those accounts at the time in question. After Mr. Conway's
13 departure from the company we closed down those accounts and created new
14 ones where available. Some such as PayPal could not be reopened. We invited
15 Bungie to subpoena all records of all payment processors and they chose only
16 to subpoena records from PayPal. They ignored the rest! Afterwards come and
17 tell this Court that we are destroying and hiding evidence.

18 8. Bungie has gone to PayPal and requested the person records of us and of our
19 vendors as well as Mr. Conway's minor children. Bungie has even gone as far
20 as acquiring the records of Mr. Conway's deceased 86-year-old mother-in-law.
21 We asked the Court to limit the scope of the subpoena and the Court granted
22 that, but Bungie's lawyers did not honor the Court's order and used the
23 information attained in the subpoena against us and gave the information to
24 Bungie.

25 9. I can cite many examples of where this case is simply misleading the Court
26 and bullying the defendants.
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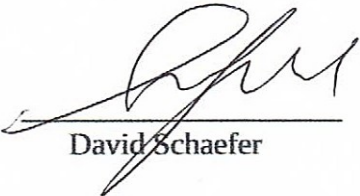
- 1 10. Bungie claims that Mr. May made the Aimjunkies cheat when in fact he did
2 not. Mr. May only used a publicly available PDG file to create a cheat that
3 Mr. May freely admits did not work, was never sold, and was never distributed
4 by Phoenix Digital.
- 5 11. Bungie claims we made the offending software even though they have not
6 presented one single shred of evidence we did.
- 7 12. Bungie claims we made a loader which their case as filed says nothing about.
8 Also, we never made the loader in question. Again we do not make software,
9 but merely distribute software made by 3rd parties.
- 10 13. Bungie's 30 (b6) representative, Dr. Kaiser, claims to have a Ph.D in computer
11 science with a focus on network security. He testified in his deposition he has
12 no idea what a .sys file is. In fact a .sys file "BEDaisy.sys" is a core component
13 of Bungie's current anti-cheat in place on their game right now. Also .sys files
14 are a major component of every windows installation.
- 15 14. Bungie's Rule 30 (b6) representative, Dr. Kaiser, also claims that Bungie did
16 not open up or disassemble our software, while the exhibits presented to the
17 Court clearly show they did.
- 18 15. We repeatedly informed Bungie of the actual engineer who created the cheat
19 and they have made no attempt to make contact with him but continue to
20 harass us for more information about him. Conversely, however, Bungie still
21 claims Mr. May made the Aimjunkies cheat. Which is it?
- 22 16. Bungie presented in arbitration over 200 IP addresses used by the defendants
23 to log into PayPal and claimed that we logged into their game and played. We
24 showed the Arbitrator that only one single IP address of the 200 presented by
25 Bungie was actually accurate. This was to an IP address used by Mr.
26 Conway's children to legitimately play Destiny 2, not Mr. Conway's access to
27 the game. Despite these facts, the Arbitrator still believed Bungie.
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- 1 17. Bungie sent an “expert” witness, Mr. Guris, to the Aimjunkies.com website in
2 September, 2022 to opine as to supposed illegal activities we are somehow
3 doing 6 months after we sold the site and have ZERO control over its content.
4 The arbitration judge found Mr. Guris to be “Very Credible”.
- 5 18. Bungie asserts we made the offending software whereas in fact we have never
6 made a single piece of cheating software offered on our sites.
- 7 19. Bungie asserts that we agreed to the terms of service to their game but they
8 have not provided one single shred of evidence we even played the game. We
9 have repeatedly testified we have never played Destiny 2 or ever agreed to
10 Bungie’s terms of service.
- 11 20. Bungie has also claimed in press accounts and arbitration that they had a
12 legitimate software anti-cheat in place on their game. In the arbitration hearing
13 Bungie presented a “Live Document” which is continually updated showing all
14 the wonderful features of their anti-cheat software, where in fact the internal
15 emails of the company during that time in question show they had no real anti-
16 cheat in place. In the Bungie emails provided in discovery they outline in very
17 plain English they were using player reports and player statistics and YouTube
18 videos to ban players and not any form of software as claimed. The Arbitration
19 judge believed their testimony, instead of the real company internal emails
20 generated at the time.
- 21 21. Bungie coerced one of its newest employees to use his personal PayPal
22 services in direct violation of PayPal terms of service by generating a fake
23 PayPal account to surreptitiously purchase the aimjunkies cheat so Bungie
24 could disassemble it. They also claim the aimjunkies terms of service were not
25 in place when in fact it was always at www.aimjunkies.com/terms-of-service

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1 and the user was required to agree to our terms of service before he was able to use
2 our products.
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4 Dated April 10, 2023.

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6 David Schaefer
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